IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11682 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOYEB AHMAD ALIAS PAPPU CHOR AZAJ AHMAD SIDDIKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11682 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MR HM PRACHCHHAK, AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 19/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by the Police Commissioner, Ahmedabad City on 20.07.2004 in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner is under detention as bootlegger from 20.07.2004 in pursuance of the above said order.

2. The grounds of detentions as placed on record reveal that a crime against the petitioner came to be registered before the Bapunagar Police Station on 18.05.2004 under Sections 66B, 65E and 81 of the Bombay Prohibition Act whereby the petitioner and his co-accused were found in possession of country liquor to the tune of 805 ltrs. The detaining authority exhaustively and thoroughly examined the papers of investigation in the said crime registered against the petitioner and came to the conclusion that the petitioner was engaged in activity of storing, selling and transporting of country liquor knowing fully well that the consumption of the said liquor was injurious to the public health. As per the detaining authority, since the petitioner was engaged in anti social activities were prejudicial to the maintenance of public order and that to prevent such anti social activities forthwith. It was absolutely necessary to pass detention order against the petitioner considering him as bootlegger within the meaning of PASA Act. Hence, the order of detention under challenge passed by the detaining authority.

3. Learned advocate Ms.S.G.Patel for the petitioner and learned AGP Mr.H.M.Prachchhak, for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by the learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the learned advocate for the petitioner and opposed and controverted by the learned AGP, it appears that the petition can be examined and disposed of, on the point that whether the detaining authority applied mind to the material placed before him properly.

5. It is undisputed fact that on 19.05.2004, the petitioner was arrested in the crime registered against him on 18.05.2004. Therefore, when the order of detention came to be passed on 20.07.2004, the petitioner was in police custody. The detaining authority was aware of this fact as reflected in the grounds of detention wherein it is recorded that though the petitioner was in police custody, but he was likely to be produced before

the Court within the time limit prescribed by the law and so producing the petitioner before the Court, the petitioner was likely to move an application for bail and on releasing on bail the petitioner was likely to continue his illegal activities.

6. In view of the above, it clearly appears that the facts of this case are squarely covered by the decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent material before the officer passing the detention order that the detenu is likely to be released on bail, inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and the detention order based on such material was liable to be quashed.

7. In the present case, undoubtedly when the order came to be passed against the petitioner for detention, the petitioner was in police custody. Though the detaining authority was well aware of this fact, but there was no material at all before the detaining authority that on production of the petitioner before the concerned Court by the police within the time limit prescribed by law, the petitioner was likely to move an application for bail. Likewise, there was no material at all before the detaining authority to infer that on so moving bail application by the petitioner, he was likely to be released on bail. Therefore, the inference drawn by the detaining authority that firstly, the detenu was likely to move an application for bail and that the detenu was likely to be released on bail, both are not supported by any cogent material. In this view of the matter, the subjective satisfaction arrived at by the detaining authority in this respect is not valid, legal and in accordance with law. The order of detention under challenge in this petition, is required to be quashed and set aside only on this ground alone.

8. In the result, in view of the above discussion, This Special Civil Application is allowed. The order of detention passed against the petitioner by the Police Commissioner, Ahmedabad City on 20.07.2004 in exercise of powers conferred upon him under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner SOYEB AHMAD ALIAS PAPPU CHOR AZAJ AHMAD SIDDIKI is directed to be set at liberty forthwith, if he is not

required to be detained in Jail for any other purpose.
Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)